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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NO. 626

EUGENE KORMUTH, Petitioner

v.

UNITED STATES STEEL COMPANY, HILLMAN COAL & COKE COMPANY and EMERALD COAL AND COKE COMPANY

OPPOSITION BRIEF OF RESPONDENT UNITED STATES STEEL COMPANY

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QUESTION PRESENTED

Whether the unanimous judgment of the Supreme Court of Pennsylvania that petitioner had no property interest in the subsurface estate in question deprives petitioner of his property without due process of law.

STATEMENT

In 1902 petitioner's predecessors in title conveyed to Monongahela River Consolidated Coal and Coke Company all the coal underlying some 300 acres of land "together with the free and uninterrupted right of way, into, upon and under said land at such points and in such manner as may be proper and necessary for the purpose of * * * mining * * * and carrying away said coal * * * together with the privilege of mining and removing through said described premises other coal belonging to the (grantee) its successors and assigns, or which may hereafter be acquired" (R. 873a-875a).

In 1911 Monongahela conveyed these premises to the H. C. Frick Coke Company, predecessor of respondent United States Steel Company.

In 1931 Frick conveyed to respondent Emerald Coal Company a portion of the coal together with the space left by the removal of the coal for use by Emerald "for the purpose of transporting to or adjacent to the Monongahela River coal from other properties now or hereafter owned by or controlled by it."

Between 1931 and 1937 Emerald removed a portion of the coal, through which it constructed an underground haulageway or corridor, which it has used for the purpose of hauling coal mined from other properties owned by Emerald. A portion of this corridor underlies a part of petitioner's surface property. Petitioner acquired his surface property in 1945, and at the time of acquisition he knew of the existence of the corridor, its purpose and use (R. 895a).

Statement.

In December 1950 petitioner filed an action in equity praying for an injunction restraining the defendants from transporting coal through the corridor beneath his land and for an accounting (R. 20a, 29a-31a).

The Court of Common Pleas and the Supreme Court of Pennsylvania held that by the conveyances of 1902 and 1911 Frick (now respondent United States Steel Company) acquired an estate in fee simple in the coal, in the space left by the removal of the coal and in such portions of the land above and below the seam of coal as were necessary and proper for the mining and removal of the coal. They held that, as an incident of this estate in fee simple, the grantee could make whatever use it saw fit of the coal and the space, including the right to convey it for use by respondent Emerald as a haulageway. They held that petitioner had no property right whatever in either the coal or the space and that petitioner had suffered no damage. They denied relief.

ARGUMENT

There Is No Question of Federal Law.

In reality, petitioner seeks to have this Court review a decision of the state court holding that he was not the owner of and therefore had no property rights in the land being used by respondents. That no such right of review exists appears from the decisions of this Court in *Sauer v. New York,* 206 U. S. 536, 51 L. Ed. 1176 (1906); *Tracy v. Ginzberg,* 205 U. S. 170, 51 L. Ed. 755 (1907); *Fox River Paper Co. v. Railroad Commission of Wisconsin,* 274 U. S. 651, 71 L. Ed. 1279 (1927).

Conclusion.

It is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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